

CHAPTER 38 IOWA INTERGOVERNMENTAL REVIEW SYSTEM

[Prior to 1/14/87, Planning and Programming[630] Ch 11]

261—38.1(7A) Purpose. These rules are intended to implement Iowa Code sections 7A.3(8), 7A.4, 7A.5 and 7A.6 and are designed to establish an intergovernmental review system to be followed by federal agencies pursuant to federal Executive Order 12372 and by federal grant applicants. The intergovernmental review system shall be referred to as the Iowa intergovernmental review system. The purpose of the intergovernmental review system is to allow state and local government coordination and review of proposed federal financial assistance and federal direct development in order to avoid duplication and conflicts.

It is contemplated the intergovernmental review process will proceed along a well defined process as set forth in these rules. This general summary is expanded upon by the other rules herein. Below is a generalized summary of the process that shall be followed by the state and areawide clearinghouses with respect to review of applications for federal funds.

Step 1: A potential applicant for federal funds is informed by the federal agency that it must notify both state and regional clearinghouses about the project for which it intends to apply for assistance.

Step 2: Applicant notifies clearinghouses; including a summary description of the project.

Step 3: The state clearinghouse notifies state agencies which may be affected by the proposed project; regional and metropolitan clearinghouses do the same for local government agencies. Clearinghouses may also waive the right to review a project.

Step 4: State and local agencies notify clearinghouses of interest, if any, in conferring with applicant about the project.

Step 5: Clearinghouses notify applicant of their interest or the interest of state and local agencies in holding a conference to explore the project in greater detail. This must be done within 30 days of Step 2. If there is no interest on the part of the clearinghouses or state and local agencies in holding a conference, the applicant's obligations under the system are satisfied at this stage. Applicant then proceeds in accord with Step 10.

Step 6: A conference is held between the applicant and the appropriate agencies to explore the project in greater detail to identify and resolve possible conflicts.

Step 7: If conflicts are not resolved, the clearinghouses must notify the applicant that there will be comments sent to the federal agency either by the clearinghouse or in the form of a state process recommendation accompanying the application submitted in Step 8.

Step 8: Applicant submits application (or adequate project description) to clearinghouses, which have an additional 30 days for comment.

Step 9: The clearinghouse submits their comments, as well as those of state and local agencies, to the federal grantor agency, to the single point of contact and to applicant within the 30-day period prescribed in Step 8. The single point of contact may also send comments to federal grantor agency.

Step 10: Applicant submits application to federal agency, with all clearinghouse comments also attached. If there are no comments, applicant submits a statement that requirement for review and comment has been followed.

Step 11: Federal agency considers application and comments and informs the single point of contact of actions taken.

Similar processes are incorporated into these rules for review of federal direct development proposals and state plans required by federal agencies.

261—38.2(7A) Definitions.

"Areawide clearinghouse" is any entity which has been designated as an areawide clearinghouse by the director.

"Clearinghouse" refers to both the state and areawide clearinghouses.

"Director" means the director of the Iowa department of economic development.

“Federal financial assistance” means any federal grant, loan or loan guarantee.

“Governing authority” is the council, commission or executive with authority to make rules concerning a clearinghouse’s activities.

“Intergovernmental review system” is defined as the system consisting of areawide clearinghouses and the state clearinghouse.

“Iowa intergovernmental review system” means the clearinghouses operating under these rules.

“Local agency” means any department, office, commission or board of a county or city government or any entity exclusive of state agencies, making application for federal financial assistance.

“Official comments” means written comments of any clearinghouse which are supported by reasoned conclusions and properly executed.

“Project” includes federally assisted projects and programs, direct federal development, federally controlled programs within the state, environmental assessments and environmental impact statements required by law to be developed in consultation with state or local environmental agencies, and state plans required by federal agencies.

“Single point contact” means the state clearinghouse.

“State agency” includes any departments, boards, commissions, or agencies of state government except legislative and judicial departments and agencies.

“State clearinghouse” is the clearinghouse within the Iowa department of economic development established for the purpose of administering the intergovernmental review system.

“State process recommendation” is the recommendation concerning a reviewed project submitted by the single point of contact and federal action or an explanation of why the recommendation was not adopted.

261—38.3(7A) Activities of the state clearinghouse. The state clearinghouse shall administer the intergovernmental review system at the state level to facilitate reviews of project proposals within the state. The areas subject to state clearinghouse review are:

1. Applications for federal grants-in-aid, loans or loan guarantees from state agencies subject to the requirements of Iowa Code section 7A.4 that require state agencies to file copies of grant applications with the office for planning and programming.
2. State plans or proposed use statements as referred to in Iowa Code section 7A.4 to meet federal requirements for grants-in-aid, loans or loan guarantees to be administered by the state.
3. Draft and final environmental impact statements or environmental assessments required by federal law or regulations to be developed in cooperation with state environmental agencies.
4. Direct federal development.
5. Proposals and applications originated by units of local government or private organizations when they may impact on the state or an agency thereof, or when the state is requested to prepare a state process recommendation.

38.3(1) Appendix A to this chapter lists projects and programs that require clearinghouse review. Appendix A may be changed or updated from time to time. The most recent Appendix A is on file for public inspection at Iowa Department of Economic Development, Division for Community Progress, 200 East Grand Avenue, Des Moines, Iowa 50309, and is incorporated by this reference as Appendix A to these rules.

38.3(2) Programs not considered appropriate for state or areawide review are programs of the following types:

- a. Direct financial assistance to individuals or families for housing, welfare, health care services, education, training, economic improvement, and other direct assistance for individual and family enhancement.
- b. Incentive payments or insurance for private sector activities not involving real property development or land use and development.
- c. Agricultural crop supports or payments.
- d. Assistance to organizations and institutions for the provision of education or training not designed to meet the needs of specific individual states or localities.

e. Research, not involving capital construction, which is national in scope or is not designed to meet the needs or to address problems of a particular state, area, or locality (except in the case of demonstration or pilot research programs where projects may have an impact on the community or area in which they are being conducted).

f. Assistance to educational, medical, or similar service institutions or agencies for internal staff development or management improvement purposes.

g. Assistance to educational institutions for activities that are part of a school's regular academic program and are not related to local programs of health, welfare, employment, or other social services.

h. Assistance for construction involving only routine maintenance, repair, or minor construction which does not change the use or the scale or intensity of use of the structure or facility.

38.3(3) The state clearinghouse will consider federal agency or state agency requests for exemption of certain classes of projects or activities under programs otherwise subject to state or areawide review which:

- a.* Meet any of the above characteristics of programs inappropriate for coverage.
- b.* Are of small scale or size or are highly localized as to impact; or
- c.* Display other characteristics which might make review impractical.

38.3(4) The state clearinghouse may enter into a written memorandum of understanding with federal or state agencies concerning the scope of review of projects where special conditions exist.

38.3(5) The state clearinghouse may periodically distribute a list of all projects received for review. Distribution may be to state agencies and areawide clearinghouses. As appropriate the state clearinghouse may invite state agency or areawide clearinghouses comments on specific projects.

261—38.4(7A) Areawide clearinghouses. The state clearinghouse, at its discretion, may allow any properly designated areawide clearinghouse to review the following activities on behalf of local units of government and other affected entities located within the designated jurisdiction of the areawide clearinghouse:

1. Applications for federal grants-in-aid, loans or loan guarantees originated by local government or private agencies within its designated jurisdictions;
2. Draft and final environmental impact statements or environmental assessments directly affecting local units of government within its designated jurisdiction;
3. Notifications of direct federal development or controlled projects within the areawide clearinghouses' designated jurisdictions;
4. As explained in subrule 38.3(1), the most recent Appendix A contains a listing of all items referred to in items 1 to 3 above.

38.4(1) An areawide clearinghouse may enter into written memoranda of understanding with federal, state or local agencies concerning the scope of reviews of projects where special conditions exist.

38.4(2) Every 30 days each areawide clearinghouse shall send to the state clearinghouse a list of projects received and a list of projects reviewed and action taken (e.g., waiver, full review, conference) within the previous 30-day period.

38.4(3) It is the responsibility of an areawide clearinghouse to provide, upon request, to local governments and organizations within its jurisdiction or to the state clearinghouse, a copy of any proposal being reviewed.

261—38.5(7A,28E,473A) Designation. Upon receipt of written request for designation and receipt of a resolution of the governing body assenting to perform intergovernmental reviews in accord with these rules, the director may officially designate any areawide planning commission, council of governments, or metropolitan planning agency as an areawide clearinghouse.

In the event that any planning commission, council of governments or similar organization fails to request designation as an areawide clearinghouse then the director may, upon the receipt of a proper written request and governing body resolution, designate another entity as the local clearinghouse, or

if the director finds it appropriate, the director may direct the state clearinghouse to perform the review of items set out in rules 38.4(7A), items 1 to 4 and 38.8(7A).

38.5(1) No clearinghouse shall charge applicants fees for the clearinghouse's review. Applicants are under no obligation to pay a fee for a review. The only obligation of the applicant is to give the clearinghouse the opportunity to review the application. No clearinghouse is required to carry out any review. If the clearinghouse does not take advantage of the review opportunity within the allotted time, the applicant is free to submit the application to the federal agency along with proof of submission to the clearinghouse for review in the manner described in subrule 38.6(11).

38.5(2) If the director determines that any clearinghouse is performing reviews in an unreasonable, arbitrary, or capricious manner, or is abusing its discretion, or is acting in excess of its authority, or in violation of these rules, or is acting upon unlawful procedure then the director may suspend or revoke the clearinghouse's designation and give notice of any suspension or revocation to all parties affected.

261—38.6(7A) Review procedures—federal financial assistance. General procedures for both state and areawide clearinghouses. An entity (state or local) applying for federal financial assistance shall notify the appropriate clearinghouses at the earliest possible date but not later than 30 days before filing with the federal grantor agency by submitting copies of the following items to the clearinghouse.

1. Four copies of a completed Clearinghouse Form 13 (CH-13) or federal Standard Form 424 (SF424) and a brief narrative describing the project and explaining the need for it. A letter containing the information requested on the forms may be substituted. Clearinghouse Form 13 is available from the state clearinghouse.

2. Four copies of a map locating construction projects where pertinent.

3. Reference to an environmental impact statement or environmental assessment shall accompany the notification of intent to apply for federal assistance when such statement or assessment is required by the federal grantor agency, or state statute or rule.

4. At any time during the review period upon request of the clearinghouse, the applicant shall submit a copy of the full application or additional information to the requesting clearinghouse.

38.6(1) An application for federal assistance shall attach to the application a copy of the clearinghouse's written clearance and any comments and forward the same together with the grant application to the federal grantor agency. The state or an areawide clearinghouse may forward the comments to the federal grantor agency if it so chooses.

38.6(2) A federal grantor agency receiving an application subject to the Iowa intergovernmental review system which does not contain evidence that opportunity for review has been given shall not process the application and shall inform the applicant of the review requirement.

38.6(3) The clearinghouse with which a review is originally filed shall assign a state application identifier number (SAI).

38.6(4) The period permitted the state and areawide clearinghouses for processing reviews shall be 30 days. Except that if an objection to the proposed project arises, or if there is a need to review the full application, the clearinghouse may extend the review period for an additional 30 days in order to resolve the problem except that no such extension will be allowed for noncompetitive continuation grants, federal mortgage guarantee programs or urban development action grants.

38.6(5) Notices of intent to apply for grants from state agencies administering federal block grants are subject to review by areawide clearinghouses if the block grant is listed in Appendix A. The grant review period will begin on the application deadline.

38.6(6) The review period begins on the date the applicant mails by first-class mail or personally delivers to the clearinghouse a completed form CH-13 or SF424 or their equivalent. Clearinghouse comments or waiver of review shall be deposited for first-class delivery at a U.S. post office depository or personally delivered to applicant, and single point of contact, if appropriate, not later than ten days before the end of the review period. The applicant shall include the comments or waiver with the application it submits to the federal agency.

38.6(7) If, in the course of review, an issue is detected that can be resolved without the necessity of submitting negative clearinghouse comments then a conference shall be held within ten days in order to resolve the issue. The conference shall be presided over by the clearinghouse. Notice of the time, place and purpose of the conference shall be given to all affected parties.

38.6(8) All clearinghouse comments are official comments if in writing and supported by reasoned conclusions. Official comments shall be confined to matters relevant to the impact of the project. Areawide clearinghouse official comments shall be signed by the chairperson or the chairperson's designee of the organization designated as the areawide clearinghouse. Official comments of the state clearinghouse shall be transmitted under signature of the director or the director's designee. The governing body of any local unit of government affected by a clearinghouse review may submit its own comments to the federal agency. At least ten days prior to the end of the period of review the clearinghouse shall send the applicant, which submitted the project for review, notice that the review has been completed or waived and any official comments shall be included with said notice.

Areawide clearinghouses shall transmit all official comments to the state clearinghouse at the same time said comments are transmitted to the applicant. The state clearinghouse shall act as the state single point of contact and will transmit all state process recommendations to the appropriate federal agency.

38.6(9) The comments containing a state process recommendation may be prepared by either the state or an areawide clearinghouse. If prepared by an areawide clearinghouse, state process recommendations shall be submitted to the single point of contact (state clearinghouse) at least ten days prior to the end of the review period. The single point of contact will submit them together with any other comments representing differing viewpoints to the federal agency accompanied by a transmittal letter identifying the comments, and stating if the state clearinghouse agrees, disagrees or takes no position on the issue(s) involved.

The state may rule that the situation commented upon does not merit a state process recommendation. In such instances, the state clearinghouse may forward the comments to the federal agency without identifying them as a state process recommendation, return them to the areawide clearinghouse, send them to the applicant or take no action.

38.6(10) A federal agency receiving any state process recommendation from the state single point of contact must accept the recommendations, reach a mutually agreeable solution with the parties preparing the recommendation, or provide the single point of contact with a written explanation for not accepting the recommendation or reaching a mutually agreeable solution. If there is nonaccommodation, the state single point of contact will transmit any federal correspondence relating to an areawide clearinghouse review to that areawide clearinghouse.

38.6(11) Applicants are only required to present clearinghouses an opportunity to review a project. In the event a clearinghouse fails to perform a review within the review period of subrule 38.6(3), the applicant may submit to the federal agency proof of submission of form CH-13 or SF424 or their equivalent. Proof of submission shall be the signed and attested assurance of the applicant stating a completed CH-13 or SF424 or their equivalent was submitted to the clearinghouse in the manner prescribed by rule 38.6(7A).

38.6(12) If a project is required to be reviewed by both an areawide clearinghouse and the state clearinghouse, it may be submitted to both clearinghouses simultaneously.

261—38.7(7A) Housing programs. For housing programs of the Department of Housing and Urban Development (HUD), and the Farmers Home Administration of the Department of Agriculture (USDA/FHA) the following procedures will be allowed, except as provided in paragraph "4" below:

1. The appropriate HUD or USDA/FHA office will transmit to the areawide clearinghouses a copy of the initial application for project approval.

2. Clearinghouses shall have 30 days from receipt to review the applications, and to forward to the HUD or USDA/FHA office any comments which they may have, including observations concerning the consistency of the proposed project with the provision of housing opportunities for all segments of the community and identification of major environmental concerns, including impact on

energy resource supply and demand. Processing of applications in the HUD or USDA/FHA office may proceed concurrently with the clearinghouse review.

3. This procedure shall include only applications specified in Appendix A.

4. As an alternative to the above procedure, the developer may submit an application directly to the appropriate clearinghouses prior to submitting it to the federal agency. In such cases, the application, when submitted to the federal agency, will be accompanied by the comments of the clearinghouses or its waiver.

261—38.8(7A) Direct development. Prior to the commencement of the federal direct development activities described in Appendix A, Part IV, federal agencies shall notify the appropriate clearinghouse by submitting to the clearinghouse a completed form CH-13a or its equivalent for review in accord with the process set out in rule 11.6(7A).

261—38.9(7A) Board of regents. Review of grant applications for federal funds listed in Appendix A, Parts I, II, and III developed by institutions under the jurisdiction of the state board of regents shall be exempt from the provisions of Iowa Code sections 7A.4 and 7A.5 and rule 38.6(7A) insofar as grant-in-aid applications are concerned, and said institutions shall be required to submit to the state clearinghouse only a copy of the grant application cover page and budget sheet or form CH-13 or SF424 or their equivalent at the time of submission to the federal agency.

261—38.10(7A) Internal process. The state clearinghouse or areawide clearinghouse may develop its own internal review process within the scope of these rules and may waive its rights of review.

261—38.11(7A,68A) Information. The state clearinghouse will maintain liaison with the local metropolitan and areawide clearinghouses in Iowa, provide them with information received from the federal government, and cooperate as needed when matters of mutual interest are being reviewed. The review material and notifications of grant-in-aid notices are public information and will be made available to agencies or persons upon request by contacting the Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, telephone (515)281-3864.

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